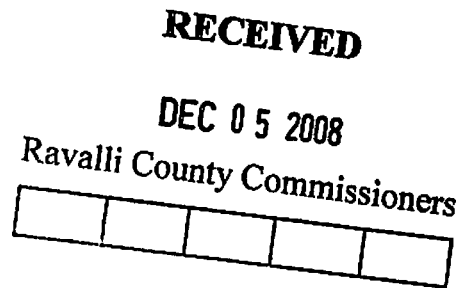


12/05/08

To: Ravalli County Commissioners

From: Ron Kramis

Re: Voluntary Zoning Districts (VZDs)



Commissioners:

Several months ago I submitted to Tristan Riddell a list of about 5 questions concerning whether it was the intent of the county commission to enforce the regulations adopted by this and prior commissions in Voluntary Zoning Districts...and if it were the intent of the commission, by what mechanism would enforcement occur.

Since my initial request, 3 commissioners in informal conversations and Mr. Riddell have all assured me that it is, in fact, the intent to enforcement.....but the means to do so remain in question.

I have recently researched the Montana Code and have discovered the following:

1. Under 72-2-101 the county board has the authority to create a zoning district at the request of 60% of the freeholders in the proposed district.
2. Importantly, in my reading of the statutes, this authority remains even though the county wide growth policy has been revoked by referendum. I find no language in 76-2-101 or any other part of Part 1 that requires the presence of a growth policy in order that the commission adopt a less-than-countywide zoning district requested by the requisite 60% of freeholders.
3. Section 76-2-113 defines the enforcement authority of the county in relation to Voluntary Zoning Districts. The language used here says that the county **"may take"** rather than **"must"** take any appropriate action to enforce the requirements of the district. In this regard, then, it appears that the commission must make a policy decision as to its intent to enforce and then must determine its means to do so.
4. Definition of any actions contravening the conditions of a VZD as either "civil" or "criminal" is not, in my reading, defined in the code. In contrast, as stated in 76-2-211 violation of county wide zoning (were such zoning to occur, and as defined in Part 2) is defined as a misdemeanor (thus criminal and not civil) and both fines and possible incarceration as penalties are stated. Whether lack of a similar definition in Part 1 for VZDs is intentional or an oversight by the legislature is, I suppose, irrelevant. However, the importance of Voluntary Zoning Districts would seem to me to be as great as county-wide zoning to the individuals involved. As such, perhaps these penalties and enforcement actions may serve as a guide for the commission and the county attorney what course of action you intend to take in relation to enforcement.

My original questions as submitted to Mr. Riddell are as follows and in part go beyond the issue of enforcement. I believe the commission would benefit knowing the answers to these questions as well since you will undoubtedly encounter them from individuals in other VZDs.

They were (approximately):

1. Is it the policy and intent of the county commission to enforce the VZDs they (and previous commissions) have adopted?
2. By what means will enforcement occur?
3. If an individual in a zoning district is determined by the county to be in non-compliance, to what extent will the county go to force compliance?
4. If non-compliance occurs and a complaint is not formally lodged with the county, is the ability of an individual or the county impaired, after some period of time, in their ability to require compliance? If so, within what period of non-compliance must a complaint be formally lodged in order that county enforcement can occur?
5. Finally, I recognize that some of the earlier-formed VZDs used less than optimal language (from a legal standpoint) in describing their regulations. What will be the commission's (and the county attorney's) intent in dealing with some of these difficulties in the face of a resistant, non-compliant individual. Clearly the county attorney will not want to enforcement obviously ambiguous or illegal requirements. However, the issue of common-sense understanding of the English language will probably arise and some decision will probably need to be made as to the importance of supporting VZDs as opposed to caving in to technicalities. I see this as eventually probably requiring a policy directive from the commission to the county attorney....one dependent upon the value the commission sees in continuing use of VZDs.

Finally, the issue of the development and use of a template (or multiple templates) developed by the county attorney to guide persons interested in apply for VZDs seems to me to be a great idea to facilitate future enforcement and avoid lawsuits in relation to enforcement issues. In this regard, some guidance from the county attorneys office as to the correct procedure to "update" the language of older VZDs would be welcome. For example, would updating of language completeing the whole process anew....in effect creating a new VZD to replace the existing one?

Thank you for your attention to these matters.....and my thanks to each of you who has spent time with me concerning them.

Sincerely,

Ron Kramis

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247, L. 1963; amd.
Ch. 527, L. 2001.

- 76-2-322. Membership and term of board members — vacancies.
- 76-2-323. Powers of board of adjustment.
- 76-2-324. Vote needed for board action.
- 76-2-325. Public access to board activities.
- 76-2-326. Appeals to board of adjustment.
- 76-2-327. Appeals from board to court of record.
- 76-2-328. Awarding of costs upon appeal from board decision.

Part 4 — Application to Governmental Agencies Group and Foster Homes

- 76-2-401. Definitions.
- 76-2-402. Local zoning regulations — application to agencies.
- 76-2-403 through 76-2-410 reserved.
- 76-2-411. Definition of community residential facility.
- 76-2-412. Relationship of foster homes, kinship foster homes, youth shelter care facilities, youth group homes, community residential facilities, and day-care homes to zoning.

Parts 5 through 8 reserved

Part 9 — Agricultural Activities

- 76-2-901. Agricultural activities — legislative finding and purpose.
- 76-2-902. Definitions.
- 76-2-903. Local ordinances.

Chapter Cross-References

Duty to notify weed management district when proposed project will disturb land, 7-22-2152.

Part 1 County Planning and Zoning Commission

Part Cross-References

Property development review, Title 7, ch. 21, part 10.

76-2-101. Planning and zoning commission and district. (1) Subject to the provisions of subsection (5), whenever the public interest or convenience may require and upon petition of 60% of the affected freeholders, the board of county commissioners may create a planning and zoning district and appoint a planning and zoning commission consisting of seven members.

(2) A planning and zoning district may not be created in an area that has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" means any area that consists of not less than 40 acres.

(4) Except as provided in subsection (5), an action challenging the creation of a planning and zoning district must begin within 5 years after the date of the order by the board of county commissioners creating the district.

(5) If freeholders representing 50% of the titled property ownership in the district protest the establishment of the district within 30 days of its creation, the board of county commissioners may not create the district. An area included in a district protested under this subsection may not be included in a zoning district petition under this section for a period of 1 year.

History: (1), (2) En. Sec. 1, Ch. 154, L. 1953; amd. Sec. 16, Ch. 273, L. 1971; Sec. 16-4101, R.C.M. 1947; (3) En. Sec. 7, Ch. 154, L. 1953; amd. Sec. 1, Ch. 229, L. 1955; Sec. 16-4107, R.C.M. 1947; R.C.M. 1947, 16-4101(part), 16-4107; (4) En. Sec. 1, Ch. 441, L. 1989; amd. Sec. 1, Ch. 591, L. 1995; amd. Sec. 1, Ch. 288, L. 2001.

76-2-102. Organization and operation of commission. (1) The planning and zoning commission consists of the three county commissioners, the county surveyor, two citizen members, each of whom resides in a different planning and zoning district, and a county official appointed by the county commissioners. The citizen members must be appointed by the board of county commissioners to 2-year staggered terms, with one member initially appointed to a 2-year term and the remaining member initially appointed to a 1-year term. Members of the commission shall serve without compensation other than reimbursement for authorized expenses and must be residents of the county in which they serve.

(2) The commission may appoint necessary employees and fix their compensation with the approval of the board of county commissioners, select a presiding officer to serve for 1 year,

appoint a secretary to keep permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.

(3) Subject to 15-10-420, the finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the commission's members must be paid from a levy on the taxable value of all taxable property within the district.

History: En. Sec. 1, Ch. 154, L. 1953; amd. Sec. 16, Ch. 273, L. 1971; R.C.M. 1947, 16-4101(part); amd. Sec. 137, Ch. 27, Sp. L. November 1993; amd. Sec. 143, Ch. 584, L. 1999; amd. Sec. 2, Ch. 288, L. 2001; amd. Sec. 193, Ch. 574, L. 2001.

76-2-103. Powers of commission and employees. (1) In general, the planning and zoning commission shall have such powers as may be appropriate to enable it to fulfill its functions and duties to promote county planning and to carry out the purposes of this part.

(2) The planning and zoning commission and any of its members, officers, and employees in the performance of their functions may enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers thereon.

History: En. Sec. 4, Ch. 154, L. 1953; R.C.M. 1947, 16-4104(part).

76-2-104. Development pattern. (1) For the purpose of furthering the health, safety, and general welfare of the people of the county, the county planning and zoning commission hereby is empowered and it shall be its duty to make and adopt a development pattern for the physical and economic development of the planning and zoning district.

(2) Such development pattern, with the accompanying maps, plats, charts, and descriptive matter, shall show the planning and zoning commission's recommendations for the development of the districts, within some of which it shall be lawful and within others of which it shall be unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings or within which the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

History: En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).

76-2-105. Continuation of prior nonconforming uses. Existing nonconforming uses may be continued although not in conformity with such zoning regulations.

History: En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).

76-2-106. Adoption of development district. (1) Adoption by the planning and zoning commission of the development district or any change therein may be in whole or in part but must be by the affirmative vote of the majority of the whole commission, provided, however, that prior to any such adoption, a public hearing shall have been held not less than 15 days after notice thereof shall have been posted in at least three public places within the area affected.

(2) The resolution adopting the district or any part or parts covering one or more of the functional elements which may be included within the district shall refer expressly to the maps, charts, and descriptive matters forming the pattern or part thereof. The board of county commissioners shall have the power to authorize such variance from the recommendations of the planning commission as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the decision of the planning and zoning commission will result in unnecessary hardship.

History: En. Sec. 3, Ch. 154, L. 1953; R.C.M. 1947, 16-4103.

76-2-107. Preparation of resolutions and other materials. The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners drafts of resolutions for the purpose of carrying out the development districts or any part thereof previously adopted by the commission, including zoning and land use regulations, the making of official maps, and the preservation of the integrity thereof and including procedure for appeals from decisions made under the authority of such regulations and regulations for the conservation of the natural resources of the county. The board of county commissioners is hereby authorized to adopt such resolutions.

History: En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).

76-2-108. Permits authorized. The planning and zoning commission hereby is empowered to authorize and provide for the issuance of permits as a prerequisite to construction,

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alteration, or enlargement of any building or structure otherwise subject to the provisions of this part and may establish and collect reasonable fees therefor. The fees so collected are to go to the general fund of the county.

History: En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).

76-2-109. Effect on natural resources. No planning district or recommendations adopted under this part shall regulate lands used for grazing, horticulture, agriculture, or the growing of timber.

History: En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).

76-2-110. Appeal procedure. Any person aggrieved by any decision of the commission or the board of county commissioners may, within 30 days after such decision or order, appeal to the district court in the county in which the property involved is located.

History: En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).

76-2-111. Cooperation by public agencies with commission. All public officials, departments, and agencies having information, maps, and data deemed by the commission pertinent to county planning are hereby empowered and directed to make such information available for the use of the county planning and zoning commission.

History: En. Sec. 4, Ch. 154, L. 1953; R.C.M. 1947, 16-4104(part).

76-2-112. Effect on powers of incorporated communities to plan adjacent areas. The authority heretofore granted by law to the incorporated communities to approve subdivision plats within the unincorporated area adjacent to their corporate limits is not abrogated by this part except and until the board of county commissioners having jurisdiction over such adjacent area establishes a planning commission and adopts initial regulations for subdivision control within adjacent areas or districts. Authority of the adjacent municipality shall be suspended on the effective date of the county regulation with respect to all areas governed by county subdivision regulations.

History: En. Sec. 6, Ch. 154, L. 1953; R.C.M. 1947, 16-4106.

76-2-113. Enforcement of zoning provisions. If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if any building, structure, or land is used in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may take any appropriate action or begin proceedings to:

- (1) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
- (2) restrain, correct, or abate a violation;
- (3) prevent the occupancy of a building, structure, or land; or
- (4) prevent any illegal act, conduct, business, or use in or near the premises.

History: En. Sec. 3, Ch. 288, L. 2001.

76-2-114 through 76-2-116 reserved.

76-2-117. Addition of territory adjacent to existing planning and zoning district. Territory that is directly adjacent to an existing planning and zoning district but that is not part of the district may be added to the district subject to the procedures provided in this part.

History: En. Sec. 1, Ch. 439, L. 2003.

Part 2 County Zoning

- not applicable to VZD, but see enforcement

Part Cross-References

Property development review, Title 7, ch. 21, part 10.

76-2-201. County zoning authorized. (1) For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that has adopted a growth policy pursuant to chapter 1 is authorized to adopt zoning regulations for all or parts of the jurisdictional area in accordance with the provisions of this part.

(2) For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that adopted a master plan pursuant to Title 76, chapter 1, before October 1, 1999, may, until October 1, 2006, adopt or revise zoning regulations that are consistent with the master plan.

(B) zoning regulations; or

(C) a revision to a growth policy, to a master plan, as provided for in 76-1-604(6) and 76-2-201(2), or to zoning regulations pursuant to this part.

(2) An interim resolution must be limited to 1 year from the date it becomes effective. The board of county commissioners may extend the interim resolution for 1 year, but not more than one extension may be made.

History: En. 16-4711 by Sec. 20, Ch. 273, L. 1971; R.C.M. 1947, 16-4711; amd. Sec. 16, Ch. 582, L. 1999; amd. Sec. 4, Ch. 87, L. 2003.

76-2-207. Permits authorized. The board of county commissioners may provide for the issuance of location or conformance permits and may collect a fee for each such permit. The proceeds of such fees shall be deposited in the general fund of the county.

History: En. Sec. 8, Ch. 246, L. 1963; R.C.M. 1947, 16-4708(part).

76-2-208. Continuation of nonconforming uses. Any lawful use which is made of land or buildings at the time any zoning resolution is adopted by the board of county commissioners may be continued although such use does not conform to the provisions of such resolution.

History: En. Sec. 9, Ch. 246, L. 1963; R.C.M. 1947, 16-4709.

76-2-209. Effect on natural resources. (1) Except as provided in 82-4-431, 82-4-432, and subsection (2) of this section, a resolution or rule adopted pursuant to the provisions of this part, except 76-2-206, may not prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner of any mineral, forest, or agricultural resource.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel or an operation that mixes concrete or batches asphalt may be reasonably conditioned or prohibited on a site that is located within a geographic area zoned as residential, as defined by the board of county commissioners.

(3) Zoning regulations adopted under this chapter may reasonably condition, but not prohibit, the complete use, development, or recovery of a mineral by an operation that mines sand and gravel and may condition an operation that mixes concrete or batches asphalt in all zones other than residential.

History: En. Sec. 10, Ch. 246, L. 1963; R.C.M. 1947, 16-4710; amd. Sec. 2, Ch. 408, L. 1991; amd. Sec. 1, Ch. 340, L. 2005.

76-2-210. Enforcement of zoning provisions. (1) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any resolution made under authority conferred hereby, the proper authorities of the county, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the occupancy of such building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises.

(2) The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions.

History: En. Secs. 7, 8, Ch. 246, L. 1963; R.C.M. 1947, 16-4707(part), 16-4708(part).

76-2-211. Violations and penalties. A violation of this part or any resolution adopted pursuant thereto is a misdemeanor and shall be punishable by a fine not exceeding \$500 or imprisonment in the county jail not exceeding 6 months or both.

History: En. Sec. 7, Ch. 246, L. 1963; R.C.M. 1947, 16-4707(part); amd. Sec. 7, Ch. 266, L. 1979.

76-2-212 through 76-2-219 reserved.

76-2-220. Zoning commission — appointment — duties. (1) For the purpose of providing an optional method of amending any zoning regulations or zoning classification, the county commissioners may appoint a zoning commission to recommend amendments to the zoning regulations and classifications. Such a zoning commission must be composed of at least five citizen members appointed at large from the zoning district. The county commissioners may adopt bylaws for the zoning commission pertaining to the qualifications of the members and such other matters as the commissioners consider necessary.

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